

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
THOMAS M. MORAN,

Plaintiff,

-against-

MTA METRO-NORTH RAILROAD COMPANY, PO NICHOLAS STRYPE, individually, PO DOUGLAS COHEN, individually, PO RICHARD DOE, full names and number of whom are unknown at present, and other unidentified members of the MTA Police Department in their individual capacities, PO LUIGI SEIDITA, individually, PO JASON NANDOO, individually, and PO JOSEPH TERACCIANO, individually,

Defendants.

ANALISA TORRES, District Judge:

The Court has reviewed the parties' letters dated April 12 and 13, 2023. *See* ECF Nos. 163, 168–70. Accordingly:

1. Plaintiff's request to present Dr. Kenneth Kramer's videotaped *de bene esse* deposition testimony at trial, ECF No. 163, is GRANTED.
2. Defendants' request to present Dr. Marina Zatman's testimony via remote, contemporaneous transmission, ECF No. 168, is GRANTED.
3. Defendants' motion to preclude Plaintiff from using the documents first disclosed on April 12, 2023, ECF No. 169, is GRANTED. Defendants first served on Plaintiff a request for the production of documents "covering letters, applications, . . . and job searches, concerning [P]laintiff's efforts to obtain employment following August 4, 2017," on November 29, 2019. ECF No. 169-1 at 2. Plaintiff did not disclose the documents in response until April 12, 2023, less than a week before trial. Plaintiff explains that his "attorneys were not aware of the existence of the computer documents relating to [P]laintiff's job searches on the internet before Thursday[,] April 6, 2023." ECF No. 170. Plaintiff's failure to timely disclose the documents is not "substantially justified or harmless," Fed. R. Civ. P. 37(c), and use of the documents would prejudice Defendants at trial. *See Softel, Inc. v. Dragon Med. & Sci. Commc'nns, Inc.*, 118 F.3d 955, 961 (2d Cir. 1997). Accordingly, at trial, Plaintiff may not use or refer to the documents disclosed on April 12, 2023.

SO ORDERED.

Dated: April 14, 2023
New York, New York

USDC SDNY
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ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 4/14/2023

19 Civ. 3079 (AT)

ORDER


ANALISA TORRES
United States District Judge